1778.

SUPREME COURT OF THE UNITED STATES.

No. 173.

THE UNITED STATES AND AL.

vs.

WM. J. HILL, DAVID M. PORTER AND WM. F. WALKER.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, Printers.

United States of America, southern district of Mississippi, circuit court, U. S.

WILLIAM J. HILL ET AL.
vs.
THE UNITED STATES ET AL.

Be it remembered, that heretofore, to wit, on the 13th day of May, A. D. 1840, came William J. Hill, David M. Porter, and William F. Walker, complainants, by their solicitors, Hays, Forester and Howard, into the clerk's office of the court aforesaid, and filed their bill of complaint herein against the United States of America, the Mississippi and Alabama Railroad Company, and William H. Shelton, defendants; which bill is in the words and figures following, to wit:

United States of America, southern district of Mississippi, ninth judicial circuit, May term, 1840.

To the honorable Samuel J. Gholson, judge of the said district, at Jackson, in chancery sitting:

Your orators, William J. Hill, David M. Porter, and William F. Walker, citizens of the said district and State of Mississippi, humbly complaining, shew unto your honor, that about or shortly before the 12th day of April, in the year of our Lord 1838, the said William J. Hill was desirous to obtain a loan of four thousand dollars of the Mississippi and Alabama Railroad Company, a certain chartered bank or institution situate at Brandon, in said State and district, and mainly directed, managed, and carried on by one William H. Shelton, as president thereof, and a board of directors; that after some negotiation between said Hill and said president and directors of said company, a loan of four thousand dollars was effected by said Hill of said company upon the following terms, that is to say, that said Hill should give a cotton bond and a note for said sum of money to said company, with good security on both the cotton bond and note.

Your orators further state, that said Hill, in pursuance of said arrangements and agreement, executed to said company a note for the said sum of four thousand dollars, dated on the 12th day of April, in the year aforesaid, and payable at four months, together with said Walker, Porter, and one John S. Rowland, as his securities on said note, and also then and there executed said cotton bond, all of which was satisfactory to said company. Whereupon, the said company loaned or discounted to the said Hill, on said note and cotton bond, the said four thousand dollars in the notes of said company, commonly called *Brandon money*, which said notes then and there were at a large discount, or depreciation, to wit, at a discount or depreciation of fifteen per cent., or more.

Your orators state, that by virtue of said cotton bond the said com-

pany was to receive said cotton and sell the same, and allow the said Hill the nett proceeds of said cotton as a payment of said note, and the surplus, if any, was to be adjusted with or paid to said Hill.

At the time of executing said note and cotton bond the said Hill had the said cotton, or it was all within his power. This the said *said* securities and the said directors, or some of them, knew at the time of making said cotton bond, both parties, who believed that said Hill would deliver said cotton in discharge of said bond; the said directors well knew that the said securities signed the said note for said Hill upon the knowledge of his ability and disposition to deliver the said cotton, and but in consideration of the premises, the said securities would not in all probability have signed said note.

Your orators further state, that at the time of loaning said Brandon money, and at the time of making said note and cotton bond, it was the intent and expectation of all parties that said note, by the sale of said cotton, was to be paid at least in funds equivalent to specie, although they all knew that said Brandon money was then at the discount aforesaid.

Your orators now state, that they are now advised and believe, and so charge, that at the time of loaning said money to said Hill, that although the said Hill, Porter, and Walker expected that said company intended and would endeavor to keep up the credit of said money, and ultimately redeem said money, yet that the said president and directors of said company did not intend to redeem the same in specie, or in par funds, but fraudulently intended to make said Brandon money the subject of depreciation and speculation, and that the money obtained by said cotton bond and other cotton bonds taken at, before, and after that time, should furnish the means of speculating in said Brandon money; all of which tended to the injury of your orators, and which your orator charge renders said notes null and void.

Your orators state, that although at the time of the judgment in this case on said note, at some suspicions excited as to the truth of the foregoing facts, yet that they had not sufficient evidence in their power at that time to make a defence at law on that ground, but *the* [they] expect from many further and subsequent developments, and by the aid of the powers of a court of equity, that all these facts can be sufficiently established.

Your orators further state, that said Hill did deliver said cotton to said bank according to the tenor and effect of said bond, and that said bond and note, long previous to the suit herein often spoken of, should have been given up to the said Hill, and that said cotton so delivered by said Hill more than paid said cotton bond. They further state, that said cotton was delivered before the transfer hereinafter spoken *off* [of]. Although these facts are true, they were unable to prove them to the jury on the trial at law.

Your orators further state, that about the day of in the year of our Lord 1838, that your orator, the said William F. Walker, and a certain John S. Gooch, and a certain Samuel M. Pucket, pur-

chased, *a* [at] sheriff sale, of one Samuel M. Flurnoy, sheriff of Madison county, a certain house and lot, together with some furniture attached to said house, for a large sum of money. It was then a*great* [agreed] betwixt said Walker, Gooch, and Pucket, that said Walker should pay said Flurnoy for the said property; and in consideration of said payment, it was agreed by said Gooch and Pucket that they would have entered in the books of said company a conditional credit for the same of some thousand dollars, for the use and benefit of said Walker, to be absolute as soon as said Walker should procure from said Flurnoy a deed to said Walker, Gooch, and Pucket of the said house and lot. They further state, that William H. Shelton, who was then president of said company, was then and there present, and stated to said Walker that said conditional credit should be entered in the books of said company, which should be absolute upon the execution of said deed.

Your orators further state, that in the books of said company said Shelton, Gooch, and Pucket, have allowed and made an entry to the credit of said Walker for the sum of seven thousand dollars, conditioned as aforesaid for the consideration aforesaid.

Your orators further state, that the said Walker, trusting to the said promises of the said Gooch, Pucket, and Shelton to have the said entry made for his benefit in the books of said company, and in fact knowing it had been made, he, long previous to notice of the transfer of said note of four thousand dollars, had paid said Flurnoy for said house and lot and furniture, according to his agreement.

Your orators further state, that notwithstanding the premises, that afterwards, to wit, about the month of June or July, in the year of our Lord 1839, the said William H. Shelton and said Railroad company, contriving and intending to defraud your orators in *the* this matter, transferred or delivered said note to a certain William M. Gwin, of said district, and marshal of your honorable court, of which said transfer your orators had no notice until long after the said Walker had paid said Flurnoy for said property.

Your orators charge, that said Gwin is now interested in said note, if not the true owner thereof; that said note has been constructively under his direction and control, as *the* are advised and believe from said transfer and delivery to this time; that he has caused or procured a suit to be brought and prosecuted on said note, in the name of the United States of America, in your honorable court, against your orators, when in fact your orators say that *that* they are advised and believe, that said suit ought not to have been brought in the name of said United States, and when said William M. Gwin should have prosecuted said suit, in his own or some other name, and before some other tribunal, provided any thing had been done on said note.

Your orators charge, that if it shall now be investigated by said Gwin or others, that said United States is the owner of said note, that all the means by which the United States became and *is* the owner of said note, be at large set forth in the answer to this bill, and that it be especially

shewn that said United States authorized the bringing of a suit in their name on said note. Your orators further shew, that said suit was brought by Richard M. Gaines, the United States attorney for said district, on said note, under the directions of said Wm. M. Gwin, marshal as aforesaid, and that the process on said suit, of every description, has been executed under and by virtue of his authority as marshal as aforesaid, when interested as aforesaid in the note aforesaid. They further state, that said suit or said note, at the last term of your honorable court, was prosecuted to a judgment, and that an execution against your orators has issued on said judgment and their property, on the property of your orator, Wm. F. Walker, liable to be seized and sold; all of which will more fully and at large appear by reference to the record and proceeding in said suit, which is herewith filed, marked exhibit (A), and which your orators pray may be taken and considered as a part of this bill, or if not now exhibited and filed, will in due time be filed and exhibited.

Your orators state, that the interest of the marshal in this suit, and the true position which the United States occupied in this matter, was not known to your orators at or before the trial of this cause, or it was a matter in defence or abatement, it would have been *relyed* upon.

Your orators further state, that said Mississippi and Alabama Railroad Company is now wholly insolvent, if not extinct; that they do not know now who (if any there be) manage said company; and, but for the interference of your honorable court, your orators (or your orator, Wm. F. Walker,) may and will have the money to pay, pretended to be due on said note, and *loose* their credits aforesaid, all of which will be contrary to equity, and manifestly injure and oppress your orators.

Your orators further state, the said deed from said Flurnoy to Gooch, Pucket, and Walker has not yet been made, although the purchase money has long since been paid as aforesaid. Your orators state that said Walker has made repeated applications to said Flurnoy for said deed, who always was and still is willing to make said deed, but the reason why said deed has not been made is, that the sale was an execution sale, and said Flournoy, owing to the complicated character of his business as sheriff of Madison county, could not ascertain from what court or under whose execution said sale was made; and that, latterly, he has made or caused to be made a strict examination of the records of Madison, but cannot find it; but states that it is believed that said sale was made by virtue of an execution from Warren county; but, so it is, the sale was made and by virtue of a valid execution against one Benjamin Williams, but owing to the negligent habits of said Flournoy, the said Walker has not yet been able to procure the said deed, which your orators state has not been owing to any gross neglect on his part, but your orators state that the said deed will be procured as soon as the execution can be found under which said property was sold. Your orators further state, that said Walker, in equity, has *substanially* complied with his contract with the said Pucket and Gooch by the payment of the money for said property, and therefore this conditional credit should now be absolute, inasmuch as they have never been disturbed in their enjoyment and title to the same.

Your orators therefore state, that for inasmuch as that by the strict rules of the common law they are remediless in the premises, and only relievable in equity, where matters of fraud, oppression, combination, and conspiracy are properly cognizable, they pray that the United States, the said Mississippi and Alabama Railroad Company, (if in existence,) and the said William M. Gwin, and said William H. Shelton, be made defendants to this their bill, and they and each of them respectively be required upon their corporal oaths, true, full, and perfect answers to make to all the allegations herein contained; and more especially that they state, whether the note and cotton bond were not given as herein before stated, and whether the loan was not made upon the faith of said cotton bond, and whether said loan was not made in the notes of said Mississippi and Alabama Railroad Company, and what discount said notes were at, and whether said Hill did not deliver said cotton, and what time he did deliver the same; and also that the said company exhibit a copy from their books of the said conditional entry of seven thousand dollars for the use and benefit of the said Walker; that said United States state whether they have any interest, and what interest, in said verdict and judgment; that said railroad company state to whom they transferred said note; and that said Gwin especially state what interest he has in said note, how he acquired the same, and to whom he has transferred it, and whether the United States has any interest in the same, and what disposition has been made of said claim by him; and they all put in as perfect and full answers as if all the allegations herein contained were put by way of separate and distinct interrogatories, and that you will grant the United States process of subpœna, with injunction, commanding the said defendant, and all others concerned, to stay all other and further proceedings on said verdict and judgment, until the whole matter can be heard in equity; and your orators pray that said injunction be made perpetual, and that your honor upon a final hearing of the whole matter will make such other rules, order, judgment, and decree in this matter, as may be consistent with equity; and, as in duty bound, shall and will forever pray, &c.

HAYS, FORESTER & HOWARD.
Solicitors for Complainant.

This day personally appeared in open court William F. Walker, who made oath, that the facts stated in the foregoing bill are true so far as stated of his own knowledge, and these things stated as on the information of others he believes to be true. W. F. WALKER.

Sworn to and subscribed in open court, May 12th, 1840.
WM. BURNS, *Clerk*.

Exhibit A.

UNITED STATES, }
vs. }
WM. J. HILL et al. }

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of

Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, came the United States of America, by R. M. Gaines, their attorney, into the clerk's office of the court aforesaid, and sued out the following writ of summons ad respondendum against William J. Hill et al., to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting.

We command you, without delay, to summon William J. Hill, John S. Rowland, David M. Porter, and William F. Walker, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, the first Monday of November next, to answer to the United States of America of a plea of trespass on the case, to their damage eight thousand dollars, and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 15th day of June, A. D. 1839, and of the independence of the United States the sixty-third.

WM. BURNS, *Clerk.*

Marshal's return.

Executed on D. M. Porter, July 29th, 1839; on W. J. Hill, August 30th, 1839; and on Wm. F. Walker, August 30th, 1839. Executed by leaving a copy at the usual place of abode of each. J. S. Rowland not found.

W. M. GWIN, *Marshal.*
Per deputy J. F. COOK.

And on the same day of suing out the writ aforesaid, the plaintiffs, by their attorney aforesaid, filed their declaration herein, in the words and figures, to wit:

Circuit court, United States, 9th circuit, November term, 1839.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The United States of America complain of William J. Hill, John S. Rowland, David M. Porter, and William F. Walker, in custody, &c., of a plea of trespass on the case on promises. For that, whereas the

said defendants, by the names and signatures of William J. Hill, J. S. Rowland, D. M. Porter, and W. F. Walker, on the 12th day of April, 1838, at the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised, jointly and severally, the said William J. Hill, as principal, and the said J. S. Rowland, D. M. Porter, and W. F. Walker as sureties, six months after the 12th day of April, 1838, to pay to the Mississippi and Alabama Railroad Company four thousand dollars, for value received, negotiable and payable at their banking house in Brandon; and the said Mississippi and Alabama Railroad Company, to whom the said sum of money mentioned in said note was to be paid, after the making of said note, and before the payment of said sum of money, to wit, on the day and year aforesaid, at the district aforesaid, by W. H. Shelton, their president, endorsed the said note, and by said endorsement ordered and appointed the said sum of money specified in said note to be paid to said plaintiffs. By means whereof the said defendants then and there became liable to pay to said plaintiffs the said sum of money specified in said note, according to the tenor and effect thereof; and being so liable the said defendants, in consideration thereof, afterwards, to wit, on the day and year and at the place, promised the plaintiffs to pay them the said sum of money according to the tenor and effect of said note.

Yet the said defendants, although often requested so to do, have not, nor has either of them, as yet paid the said sum of money, or any part thereof, to the said plaintiffs, but so to do have hitherto wholly failed and refused, and still fail and refuse, to the damage of the plaintiffs $8,000, and therefore they bring suit.

R. M. GAINES,
U. S. Att'y.

And the said defendants, William J. Hill, David M. Porter, and William F. Walker, by attorneys, come and defend the wrong and injury, when, &c., and say actio non, &c., because they say that they did not undertake or promise in manner and form as the said plaintiffs above thereof hath complained against them; and of this they put themselves upon the country, &c.

A. H. & J. HANDY, *for Def'ts.*

And the plaintiffs likewise.

R. M. GAINES, *U. S. Att'y.*

And the said defendants, for further plea in this behalf, say actio non, because they say that after the making of the said promissory note in the said plaintiffs' declaration mentioned, and before the said promissory note was endorsed, set over, and delivered to the said plaintiffs by the said Mississippi and Alabama Railroad Company, to wit, on the first day of January, eighteen hundred and thirty-nine, at the district aforesaid, they, the said defendants, well and truly paid the said Mississippi and Alabama Railroad Company the said sum of money in the said promissory note mentioned, and this they are ready to verify. Wherefore, they pray

judgment, if the said plaintiffs ought to have or maintain his aforesaid action against them, &c.

A. H. & J. HANDY, *for Def'ts.*

And the said plaintiffs, for replication to said 2d plea of the said defendants, say precludi non, because they say the said defendants did not well and truly pay said sum of money in said declaration mentioned to the Mississippi and Alabama Railroad Company, before the transfer of said note declared on to the said plaintiffs; and this they pray may be inquired of by the country, &c.

R. M. GAINES, *U. S. Att'y.*

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the twentieth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, came the parties by their attorneys aforesaid, and a jury being called, came, to wit, Joseph Dunbar, Howell Hinds, L. C. Sayer, Hugh Connell, S. W. Dial, S. G. Rowan, R. G. Davenport, Thomas Johnson, William Cotton, A. Mizell, G. B. Adams, and E. M. Avery, who being empannelled, tried, and sworn the truth to speak according to the matters within contained, upon their oath do say, that they find for the plaintiffs on the issue joined the sum of four thousand three hundred and fifty-three dollars and thirty-two cents.

Therefore, it is considered by the court, that the said plaintiffs recover against the said defendants the sum of four thousand three hundred and fifty-three dollars and thirty-two cents, the damages by the jurors in form aforesaid assessed, and their costs by them about their suit in that behalf expended. And the said defendants, in mercy, &c.

And afterwards, to wit, on the 2d day of January, A. D. 1840, the following execution of fieri facias issued against the said defendants, by virtue of the foregoing judgment, in words and figures, to wit:

CIRCUIT COURT OF UNITED STATES,
Southern district of Mississippi, sct:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of William J. Hill, David M. Porter, and William F. Walker, late of your district, you cause to be made the sum of four thousand three hundred and fifty-three $\frac{23}{100}$ dollars, which the United States of America, lately in our circuit court for the district aforesaid, have recovered against them for their damages, which they have sustained by reason of the non-performance of a certain promise and assumption by the said Hill, Porter, and Walker to said United States of America lately made, with interest on the said sum at 6 per centum per annum from the 20th day of November, 1839, until paid; also the sum of forty-one $\frac{60}{100}$ dollars, for costs by them about their suit in that behalf expended, whereof the said Hill, Porter, and Walker are convicted, as appears to us of record; and that you have the said moneys before the judges of

our said court, on the first Monday of May next, to render unto said plaintiffs for their damages and costs aforesaid. And have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, A. D. one thousand eight hundred and thirty-nine, and in the 64th year of the independence of the United States of America.

[L. S.]

Issued the 2d day of January, 1840. WM. BURNS, *Clerk*.

Marshal's return.

Levied the 29th April, 1840, on ten negroes, (viz.,) Beson, Wash, Charles, Bill, Davy, Lewis, Moriah, Bob, and Isaac, the property of William F. Walker. WM. M. GWIN, *Marshal*.
By CHA'S HECKSON, *Deputy*.

And afterwards, to wit, on the 8th day of June, A. D. 1840, the following writ of vend. exponas issued against the said defendants, by virtue of the foregoing judgment, in the words and figures [following], to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that you expose to sale those goods and chattels of William J. Hill, David M. Porter, and William F. Walker, consisting of the following negro slaves, to wit, Ben, Wash, Charles, Bill, Davy, Lewis, Mariah, Lucinda, Bob, and Isaac, levied on as the property of William F. Walker, which, according to our command, you have taken, and which remain in your hands unsold, as you have certified to the judges of our circuit court, for the southern district of Mississippi, to satisfy the United States of America the sum of four thousand three hundred and fifty-three $\frac{32}{100}$ dollars, with interest on the same, at the rate of 6 per centum per annum, from the 20th day of November, 1839, until paid; and the sum of ninety-eight $3\frac{1}{3}$-100 dollars, for costs and charges by them in that behalf expended, whereof the said United States of America have recovered execution against the said Hill, Porter, and Walker, by virtue of a certain judgment in our said circuit court. And that you have said moneys before the judges of our circuit court, to be held at Jackson, in the district aforesaid, on the first Monday of November next, to render to the said plaintiffs. And have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of May, A. D. one thousand eight hundred and forty, and in the 64th year of the independence of the United States.

[L. S.]

WM. BURNS, *Cl'k.*,
Per SAM. LAUGHMAN, *D. C.*

Issued the 8th day of June, A. D. 1840.

Marshal's return.

Stopped by injunction, June 13th, 1840.

W. M. GWIN, *Marshal*,
By W. L. BATTLE, *Dept'y*.

And afterwards, to wit, at the May term, A. D. 1840, of said court, to wit, on the 13th day of May, the following order was made by our said circuit court, to wit:

In chancery.

WILLIAM J. HILL et al.
vs.
The UNITED STATES.

It is ordered that an injunction be awarded according to the prayer of the bill filed, upon the said complainants' executing bond in the penalty of double the amount of the judgment at law, conditioned according to law, with good security, to be approved by the court or its clerk.

(*Bond.*)

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, William F. Walker, William Morns, and J. J. Bryant, are held and firmly bound unto the United States of America in the just and full sum of ten thousand dollars, lawful money of the United States, to be paid to the said United States of America, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the thirteenth day of May, A. D. 1840.

The condition of this obligation is such, that whereas the above bound William F. Walker has obtained from the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States, for the southern district of Mississippi, an injunction to stay all further proceedings at law in a certain judgment in said court against the said William F. Walker and others, at the suit of said United States of America.

Now, if the said William F. Walker, in case the said injunction shall be dissolved, shall well and truly pay all money and costs due, and to become due, to said United States of America, the plaintiff in said judgment, and also all such costs and damages as shall be awarded against him, then this obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered in the presence of:

W. F. WALKER, [SEAL.]
WM MORRIS. [SEAL.]

Filed and approved in open court, surety justifying.

WM. BURNS, *Cl'k*.

And afterwards, to wit, on the 14th day of May, A. D. 1840, the following writs of subp'a and injunction issued, in the words and figures following, to wit:

(*Subpœna.*)

UNITED STATES OF AMERICA,
Southern district of Mississippi:

The President of the United States, to the United States of America, the Mississippi Railroad Company, and Wm. H. Shelton, greeting:

For certain causes offered before us, in our circuit court for the district of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our circuit court, in and for said district, sitting in chancery, to be held at the town of Jackson, on the first Monday of November next, to answer to a bill of complaint exhibited against you by Wm. J. Hill, David M. Porter, and William F. Walker, complainants in our said court, and further to do and receive what our said court shall consider in this behalf. Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in May, A. D. one thousand eight hundred and forty, and in the sixty-fourth year of the independence of the United States.

WM. BURNS, *Cl'k.*

Issued the 14th day of May, A. D. 1840.

Executed on Wm. H. Shelton, August 8th, 1840.

WM. M. GWIN, *Marshal,*
By W. L. BATTE, *Dept'y.*

Injunction.

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss:

The President of the United States, to the United States of America, R. M. Gaines, attorney for United States, and their counsellors, attorneys, and agents, greeting:

Whereas it hath been represented to us, in our circuit court, for the ninth circuit and southern district of Mississippi, in chancery sitting, on the part of William J. Hill, David M. Porter, and William F. Walker, complainants, that they have lately exhibited their bill of complaint against you, the United States of America, and other defendants, to be relieved touching the matters in said bill contained, we, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said United States of America, your counsellors, attorneys, and agents, under the penalty of two hundred dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from collecting a certain judgment in said court, for about the sum of $4353.32, rendered at the November term, 1839, in favor of said United States against the said complainants, and from any further proceedings against the said complainants, touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] May, A. D. one thousand eight hundred and forty, and in the sixty-fourth year of the independence of the United States.
Issued the 14th day of May, A. D. 1840.

WM. BURNS, *Cl'k.*

And afterwards, on the same day, to wit, on the 14th day of May, A. D. 1840, the separate answer of William M. Gwin was filed in said court, in the words and figures following, to wit:

The separate answer of William M. Gwin to the bill of complaint filed on the equity side of the circuit court of the United States for the southern district of Mississippi, by William J. Hill, David M. Porter, and William F. Walker, against respondent, the United States, and other persons.

The respondent, saving and reserving to himself all manner of advantage and exception to the many errors and untruths in said bill contained, for answer thereto, or to as much thereof as he is advised is material and necessary for him to answer unto, answering, says: That it is not true, as stated in said bill of complaint, that the note upon which the judgment mentioned in said bill was obtained, was ever transferred to him by the Mississippi and Alabama Railroad Company, nor was the same ever delivered to him by the said corporation, or any officer of the same. Respondent states, that the allegation in said bill of complaint, that respondent is interested in said judgment, is false; and the said William F. Walker, the complainant, who made the affidavit to the bill, was so informed by respondent on the 13th of May, 1840. Respondent states, that he is not directly or indirectly interested in said judgment; that said judgment has only been under his control as marshal of the southern district of Mississippi; that the only control he has in said judgment is the same that he has in all causes in your honorable court, and is only an interest in the fees that may accrue from the service of process and collection of the money. Respondent will here state to your honor the manner in which the United States became interested in said note and judgment. It was as follows: George B. Dameron, late receiver of public moneys at Mount Salus, Mississippi, died indebted to the United States, as receiver, in a large amount of money. During the winter of 1838-'9, the administrator of said George B. Dameron proposed depositing with the United States, as collateral security, to be sued on by the United States, such an amount of the Mississippi and Alabama Railroad Company as he could command. The proposition was accepted by the United States, and the solicitors of the Treasury of the United States addressed a letter to respondent as marshal, instructing him to receive said notes and place them in the hands of the United States district attorney, to be collected at the cost of the estate of said George B. Dameron, with the least practicable delay.

In accordance with these instructions, your respondent placed in the

hands of the United States district attorney the amount of about thirty thousand dollars of the notes of the Mississippi and Alabama Railroad Company, upon which suit was to have been brought against the said Mississippi and Alabama Railroad Company in the name of the United States, and the amount collected therefrom was to be placed to the credit of said Dameron's account. The officers of the Mississippi and Alabama Railroad Company, to avoid a suit, proposed surrendering to the United States district attorney a large amount of the notes of various debtors of said company to be sued on, the proceeds of which were to be applied to the debt due from said Dameron to the United States, until the amount of thirty thousand dollars and interest should be made, and the residue to be paid to the said company. Notes to a much larger amount than thirty thousand dollars were transferred and delivered to the United States district attorney, to secure the collection of said sum of thirty thousand dollars, and guard against offsets and insolvencies. The notes of the debtors of said company never were surrendered or delivered to respondent, but to the United States district attorney; respondent never saw one of them, or knew of them, as he now remembers, only as such knowledge was derived from service of process against the parties as marshal. Respondent never did know, nor does he now know, except from information, the names of the debtors whose notes were transferred and delivered to the United States district attorney. Respondent only knows that suits have been brought on various notes transferred by said company, and various judgments rendered, upon which no money has been made, among which is the judgment sought to be enjoined and relieved against by said bill of complaint. Respondent states that every statement in said bill of complaint contained, referring to respondent as a party interested in said judgment, is false. One of the complainants, William F. Walker, who seems to be the active complainant in this bill, has acknowledged to respondent, that the information upon which said bill was filed was in court, and the party referred to as the informant of said complainant, in said Walker's presence, denied every allegation in said bill charged against respondent as to the ownership and interest in said judgment, and the complainant, Walker, expressed himself satisfied therewith. Respondent believes said admissions took place before the grant of the injunction in this case. Respondent denies all fraud wherewith he stands charged. Respondent further states, that he knows nothing of the other portions of said bill, whether true or false, but is advised, and believes, and so charges, that they prove no sufficient equity to authorize the interference of this honorable court. Respondent requires full proof of said allegations, if necessary, on the trial of this cause, so far as he is to be affected thereby.

Respondent further answering, states, that it appears from said bill that all the complainants, and all the defendants, except the United States, are citizens of the State of Mississippi; he is advised and believes that this honorable court has no jurisdiction of said bill, and that the same may be taken advantage of by demurrer; whereupon this respon-

dent does demur to said complainants' bill of complaint, and because said bill contains no averment of eviction of said property, or other sufficient ground of equity, whereby the jurisdiction of this court can be sustained, said respondent demurs also for that cause. This respondent having now fully answered and demurred to said complainants' bill, he prays said injunction to be dissolved and said bill to be dismissed, and respondent discharged with his reasonable costs; and, as in duty bound, he will ever pray, &c.

GEO. S. & J. S. YERGER, *Sol's.*

United States circuit court, ninth judicial circuit, May term, 1840.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Personally appeared in open court the within named respondent, William M. Gwin, and made oath that the things stated in his said answer were true, so far as they are stated of his own knowledge, and that such as are stated upon the information of others, he believes to be true.

WM. M. GWIN.

Sworn to and subscribed before me, on this 14th May, 1840.

WM. BURNS, *Cl'k.*

And afterwards, to wit, on the 20th day of January, A. D. 1841, the separate answer of the United States, with exhibits, was filed in said court, in the words and figures following, to wit:

The separate answer of the United States of America to a bill of complaint exhibited against them and others in the circuit court of the United States for the southern district of Mississippi, by William J. Hill, David M. Porter, and William F. Walker.

These respondents, saving and reserving to themselves, now and at all times, all benefit of exception to the many errors, &c., in said bill contained, for answer thereto, or to as much thereof as they are advised it is material for them to answer unto, they answer and say: That they are the holders of a note of William J. Hill, J. S. Rowland, D. M. Porter, and Wm. F. Walker, for the sum of four thousand dollars, dated April 12th, 1838, payable six months after date to the Mississippi and Alabama Railroad Company, commonly called the Brandon bank, and which is presumed to be the same note of $4000 referred to in the complainants' bill of complaint. They hold the said note by transfer from the said Mississippi and Alabama Railroad Company, and will hereinafter state fully "all the means by which they became and are the owner of said note," on which they admit a suit was brought in their name, and a judgment recovered, as stated in said bill. These respondents have no knowledge whatever of the negotiation for a loan which led to the execution of said note by the complainants, or of the discount of said note by said bank, or of the kind of money or notes received by complainants on the discount of the same, or of the depreciation of the same, although they have heard that in the State of Mis-

sissippi the notes of said company did circulate, and were greatly depreciated in value. They have no knowledge of any intention, on the part of the managers of said company, fraudulently to make the said notes the subject of depreciation and speculation. They know nothing of the contract alleged in said bill in reference to the cotton bond, or whether the cotton was delivered before the transfer of said note. They know nothing of the purchase by Wm. F. Walker, John S. Gooch, and Sam'l Flournoy, of a house and lot, as alleged in said , or any contract whatever, in relation thereto, between the said parties and the said bank, or any officer or agent thereof, or whether the complainants, or any of them, had notice of the transfer of said note upon the payment of the purchase money for said lot. On all these points, if they should be deemed in any way material, these respondents require full proof; but they submit to this honorable court, and insist, that they are not material, and that even if the allegations of the bill, in relation to these matters, were all true, which they do not admit, they furnish no ground of equitable relief as against these respondents, who are innocent holders of said note and judgment, without notice of any want of consideration, failure of consideration, or fraud, as between the original parties to said contract; and that, if any such defence in fact existed, the said complainants ought to have made the same on the trial of the suit at law on said note; and that, not having done so, they are precluded from any relief in a court of equity, and respondents rely upon, and claim the benefit of, this objection, as fully as the same were formally relied upon by way of plea or demurrer to said bill.

These respondents, further answering said bill, proceed to state "all the means by which they became, and are, the owners of said note," and of the judgment obtained thereon. They state that one George B. Dameron, deceased, was in his lifetime indebted to them in a sum of money over $30,000, to collect which, the solicitor of the Treasury of the United States issued a distress warrant, under the act of Congress of the 15th of May, 1820, and enclosed it to Wm. M. Gwin, marshal of the then district of Mississippi, (now the southern district of Mississippi,) on the 26th of Sept., 1835. They state, that after a good deal of correspondence between the solicitor and the marshal, from that time till the 23d of February, 1839, which it is deemed unnecessary particularly to refer to, but which is ready to be produced if this honorable court should so direct, the marshal on that day wrote a letter to the solicitor, a copy of which is herewith filed, marked exhibit No. 1, and prayed to be taken and considered a part of this answer; on the 18th day of March, 1839, the solicitor replied to it in a letter of that date, a copy of which is also herewith filed, marked exhibit No. 2, and prayed to be taken and considered as a part of this answer. They further state, that early in the month of April, 1839, the said marshal exhibited to R. M. Gaines, U. S. att'y of the southern district of Mississippi, the original letter, of which No. 2 is a copy, and at the same time informed him that he had received from Mr. Geo. C. Dameron, under the authority of that letter, the sum of $30,000, in the notes of the Missis-

sippi and Alabama Railroad Company, as collateral security for the debt before mentioned, for the collection of which he had a distress warrant. He also informed the district attorney that the bank would transfer good bills receivable, to an amount sufficient to cover the collection of the said sum of $30,000, and advised that course, instead of a direct suit against the bank on her notes, as being most likely to ensure collection. The district attorney, concurring in this opinion, sent a messenger and agent to Brandon, with a letter to the president of the bank, informing him that the notes of his bank were held by the U. States, as before stated, and an agreement was made between said agent and president, for the transfer of about $78,988.72 of bills receivable of the bank, of which the note referred to in the complainants' bill was one. They state that at the time of the transfer of said notes there were credits endorsed on them, amounting in the aggregate to $25,000 or $30,000. They further state, that some delay having occurred in completing the agreement and transfer, the solicitor of the Treasury was not notified of the proceedings of the district att'y until the 7th of June, 1839, about which time the suit was instituted on said note. On the 30th Aug't of the same year, the district attorney wrote a letter to the solicitor of the Treasury on other business, of which the following extract only relates to the subject matter of said bill. "I have received no reply to my letter of 7th June, in relation to the transfer of $30,000, of paper of Brandon bank to the U. S. as collateral security for a debt due to same by Geo. C. Dameron. I should be glad to know whether my proceedings on that subject are approved by the department." To that letter the dist. att'y received a reply from the solicitor, dated Oct. 4th, 1839, the original of which is herewith filed, marked exhibit No. 3, and prayed to be taken and considered as a part of this answer. This is a full statement, so far as these respondents are informed, of "all the means by which they became, and are, the owners of said note." Respondents further state, they have been recently informed, the original security for the debt of Dameron is not good, and that the only, or chief hope, of collecting it is from the collateral paper, and this note and judgment among the rest. They do not know on what facts the complainants base their statement in the bill, that the said note has been constructively under the direction and control of the marshal from the time of the transfer. It is true, that the marshal has had a decided, and perhaps a preponderating, influence in its direction and control. The whole arrangement having grown out of the suggestion of the marshal in his letter of the 23d Feb'y, 1839, he having always had the entire control of the process against Dameron, and of course, being supposed to be fully possessed of the views and wishes of the solicitor in regard to it; and the dist. att'y never having had any correspondence with the department on the subject, except as before stated, until about the time and since the filing of the bill, the latter has yielded a willing deference to the opinions and views of the marshal, in relation to the entire batch of cases founded on the transferred paper, and has often referred persons interested in them to him

for information as to the views of the solicitor, and the probability of procuring indulgence, &c. These respondents, having answered all such of the general statements of said bill as they are advised it is at all material for them to answer, for answer to the specific interrogatory, whether they have any interest, and what interest, in said note and judgment, they answer and say, that they have an interest in said note and judgment, and their interest extends to the whole amount of said judgment. And now, having fully answered said bill, these respondents deny all fraud and unlawful combination, and pray that the injunction heretofore granted in this cause be dissolved, and the bill of the complainants dismissed, with costs, &c. And, as in duty bound, &c.

R. M. GAINES,
U. S. Att'y, southern dist. of Miss.

Exhibit No. 1.

MARSHAL'S OFFICE, *Natchez, Feb. 23d*, 1839.

To H. D. GILPIN, ESQR.,
Solicitor of the Treasury.

SIR: Your communication of the 10th January, making inquiries as to the present state of the distress warrant against G. B. Dameron, is received.

I notified you some time since of the unceasing efforts made by the representative of Mr. Dameron to pay this debt to the Government. The suspension of specie payments placed it out of the power of any one to raise any amount of such funds in this State as would be received by the Government. I advised Mr. Dameron to sell his, and be prepared to meet his debt on the resumption of the banks. He did make sales of property, and transferred me the notes as additional security to the Government, and in every way showed a willingness to pay the debt. He had made arrangements to get for these notes, and other property, money enough to pay the whole debt, but unfortunately, the bank, whose notes he was to receive, did not resume on the first of January last, but will resume on the first of August next. This, now, is the state of the case; Mr. Dameron (son of the late receiver) can pay thirty thousand dollars of the debts in the notes of the banks that have not resumed specie payments, which I cannot receive. But owing to the exertions he has made, and is making, I feel disposed to give him some additional time to complete his arrangements for payment. I have advised him to place in my hands the bank notes, with instructions to sue the bank in the U. States court in the name of the United States. Judgment will be rendered in May next, and if the bank should fail to resume on the 1st of August, on the judgment I can at once make the money. He is willing to do this, and I hope you will give me leave to adopt this course.

I would further suggest, that there are many items in Mr. Dameron's account that I know to be incorrect. I know from my personal knowledge that he paid the money in many of the cases disallowed, and

could so establish before a jury. Would it not be right to have [a] suit instituted on this case, in order that these suspended items might be brought before a jury; Mr. Dameron has had such repugnance to appear like opposing the payment of the claim, as to lay over this until he could make payment of the balance; but I think, in justice to both parties, it ought to be speedily settled. I should be pleased to receive instructions from you on this subject also.

With great respect, your obd't serv't,

(Signed) WM. M. GWIN, *Marshal.*

(*Exhibit No.* 2.)

OFFICE OF THE SOLICITOR OF THE TREASURY,
March 18, 1839.

SIR: I have received your letter of the 23d February, relative to the case of George B. Dameron, late receiver of public moneys for the Choctaw district, Mississippi. I have consulted the Secretary of the Treasury on the subject, and have to say, that it will be proper for you to receive the $30,000 in the bank notes of which you speak; but in so doing you will of course receive them as only collateral security, and state to Mr. Dameron they are not accepted as payment. When the amount of them shall be realized and paid into the Treasury of the U. States, he will then have credit, but not before; it is also very desirable that you should take every measure to realize them, in legal currency, as early as possible. Have the goodness to report your proceedings in the case.

In regard to the credits of Mr. Dameron, I send you herewith a statement of differences, which will show all that have been rejected. If you will state which of them, in your opinion, can be shewn to be a legal offset, and the grounds, the matter will be immediately brought to the notice of the accounting officers, and their decision made known. After that, such course will be adopted as the circumstances shall render proper.

Very respectfully, yours,

(Signed) H. D. GILPIN,
Solicitor of the Treasury.

WM. M. GWIN, ESQ
U. S. marshal, Natchez, Mississippi.

(*Exhibit No.* 3.)

OFFICE OF THE SOLICITOR OF THE TREASURY, *Oct.* 4, 1839.

SIR: I have received your letter of the 30th August, relative to the case of George B. Dameron, late receiver for the Choctaw district. As I understand, you have accepted from the Brandon bank the notes receivable, mentioned in your two reports of 4th and 15th June, and amounting together to $78,988 $\frac{72}{100}$, in lieu of the $30,000 of the notes received by the marshal from Mr. Dameron, as collateral security for his father's debt. I see no objection to this arrangement, provided the

amount due on the notes is sufficient, as I presume it is, to cover the whole $30,000, with interest and expenses of collection. I have therefore to request you to proceed as promptly as possible with the collection of them.

Very respectfully, yours,

H. D. GILPIN, *Solicitor of the Treasury.*

R. M. GAINES, ESQ., *U. S. att'y, Natchez, Mississippi.*

And afterwards, to wit, on the 10th day of June, A. D. 1842, the following answer of William H. Shelton was filed in our said court, in the words and figures, to wit:

To the honorable Samuel J. Gholson, judge of the circuit court of the United States, at Jackson, in the southern district of Mississippi, in chancery sitting:

The separate answer of William H. Shelton to a bill of complaint, filed in your honorable court by William J. Hill, David M. Porter, and William F. Walker, against himself, the United States of America, the Mississippi and Alabama Railroad Company, and William M. Gwin.

This defendant, after saving and reserving to himself the full benefit of all manner of exceptions to the manifold errors and imperfections in said bill contained, for answer thereunto, so far as he is advised it is material he should answer, sayeth, that during all the time of which the complainant speaks, in relation to the contract for the loan of the money, and at the time W. F. Walker claimed a credit for amount of two notes due him by John S. Gooch and Samuel M. Pucket, he was president of the said Miss. and Ala. R. R. Company, as charged in said bill; that so far as said complainant claims a credit on the note sued upon for amount of cotton delivered by William J. Hill to the Miss. and Ala. R. R. Co., that there is no equity in the said bill; the note was discounted, and money loaned said Hill, on the security and on the assurances of a cotton bond for cotton delivered of the crop of 1838, but none was ever delivered in payment of said note by Hill, or any one for him. It is true William J. Hill delivered a large amount of cotton, but the proceeds *was* fully *exausted* by prior advances made him upon the crop of 1837 by the said company.

As to as much of the said bill as claims a credit of a large sum of money on account of notes deposited by Wm. F. Walker for collection, and for the benefit of said Walker, this respondent answers, that on or about the 9th July, 1839, the said Wm. F. Walker presented to the bank two notes, netting at that time $2,601.80 each, and claimed a credit for the same, which the directors were willing to allow under a former agreement; but Puckett and Gooch, upon whom the notes were, being present, objected upon the ground that they had no right to the property in Madisonville, for which the notes were given. It was then agreed that the amounts should pass to Walker's credit, whenever Puckett and Gooch received a satisfactory title to the property. In the mean time the notes were deposited to Walker's credit in the bank for collec-

tion. Recently, this respondent was requested by Andrew Hays, esq., to take an order to Captain Blow (who had charge of the papers and books of the said company) for said notes. This respondent did so. Upon inquiring of Captain Blow, he informed him, this respondent, that the said notes were paid. The two notes amounting to $5,203.60, which should be at the credit of said Walker on the books of the company, and justly due him, as he, the said Walker, has long since paid all his own liabilities to said company.

This respondent has examined the books of the bank in relation to Wm. J. Hill's account, and find a statement showing a transfer of the two notes to the Planters' Bank of Mississippi, 12th September, '39, and including interest, - - - - 24,622.27

Credits for cotton - - - - 10,366.78

Balance due by Wm. J. Hill - - $14,235.49

exclusive of a note transferred to Addison and Games for $4,000, to be applied to the payment of a claim due by said company to the United States. This respondent, having fully answered, prays to be dismissed with his costs, &c., &c.

WM. H. SHELTON.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Personally appeared before me, the undersigned commissioner of affidavit in and for said district, Wm. H. Shelton, the foregoing named defendant, who, having been duly sworn according to law, saith, that the statements made by him in said answer are true to the best of his knowledge and belief, and subscribed the same in my presence.

Given under my hand and seal, at Jackson, this 8th day of June, 1842.

GEO. W. MILLER, *U. S. Com'r.*

And afterwards, to wit, at the May term, A. D. 1842, to wit, on the 13th day of June, 1842, the following order was made and entered on the minutes of said court, to wit:

Ordered, that the injunction in this case be continued until the next term, at which time this cause is set over for hearing on the present pleadings, and leave is given for either party to take depositions.

(*Replication.*)

WM. J. HILL et al.
vs.
U. STATES et al. } In equity.

In this case said complainants come, and for replication to said several answers filed in this cause say, that they ought not to [be] precluded from having a decree in the facts in their bill of complaint contained, by reason of any matter *by reason of any matter* or things in said business contained, because they say that *that* the material matters in said bill contained are true, and that *and that* all matters in said business

contained are incorrect in fact, and immaterial in law, and form no just or equitable bar to the prayer of complainants' bill of complaint, and he prays judgment according to prayer of said bill of complaint.

A. HAYS, *Solicitor of compl'ts.*

And afterwards, to wit, at the October rules of said court, A. D. 1845, to wit, on the first Monday of October, in the year of our Lord one thousand eight hundred and forty-five, came the complainants, by their solicitor, into the clerk's office of said court, and set this cause for hearing on bill, answers, and exhibits.

And afterwards, to wit, at the November term, A. D. 1845, to wit, on the 17th day of November, A. D. 1845, came the complainants, by their solicitors, and on their motion leave is given them to file an amended bill herein, which bill is accordingly filed, and is in the words and figures following, to wit:

To the honorable Samuel J. Gholson, judge of the United States for the southern district of Mississippi, in chancery sitting.

The amended bill of William J. Hill, David M. Porter, and William F. Walker, citizens of the said district, to a bill heretofore filed by them in your honorable court, where they are complainants, and the United States of America, the Mississippi and Alabama Railroad Company, William M. Gwin, and William H. Shelton, defendants.

And the said complainants, in addition to the facts stated in their original bill filed in this cause, by way of amendment thereunto, most respectfully show unto your honor, that the said Wm. F. Walker hath not as yet been able to obtain the deed for the lot, though sued for, the lots sold by said Samuel M. Flournoy, at Madisonville, as sheriff of Madison county, as stated in said bill; that the said Samuel M. Flournoy hath long since removed from the United States of America, and that in consequence of his said removal and absence, and the careless habits of the said Flournoy, as stated in his original bill, the complainant, Walker, hath not been able to procure the said deed from said Flournoy to said Gooch & Puckett; as he had originally stipulated with said Gooch & Puckett, this difficulty has been greatly increased by the fact, that he is unable to find the record of the judgment and the execution under which said house and lot was sold, because your orators do not know certainly from what office said execution issued, or before what court said judgment was rendered. Your orators further state, that all the title which the sheriff aforesaid sold as aforesaid, was the right, title, and interest which the said Benjamin Williams had to said house and lot, and that was all the right, title, interest, or estate, which said Walker undertook to convey to said Gooch and Puckett, and such was the understanding of the said Gooch, Puckett, and Walker at the the time of said contract.

Your orator, the said William F. Walker, finding great difficulties in getting said deed as he had contracted to do, and having advanced large sums of money to comply in all respects with his undertaking in this be-

half with said Gooch and Puckett, and knowing that said Gooch and Puckett had sustained no injury for the want of the said deed, he has obtained from said Benjamin Williams a deed to himself for said house and lot, conveying all his right, title, and interest in said property to him; and he, the said Walker, has executed a similar deed to said Gooch and Puckett, for said house and lot, under the direction of John Lee Gooch and Gustavus Puckett, in lieu of the said sheriff's deed, with the separate understanding and stipulation that he will do the best he can to get said deed of said sheriff, and pay all damages which they may suffer by reason of his not having obtained said deed from said sheriff.

He further states, that said Puckett and Gooch have accepted a deed of said Walker in lieu of said sheriff deed, and now consider said conditional entry, in the books of the Brandon bank as absolute, which deeds are herewith filed, marked exhibits (A,) (B,) and (C,) and which they pray may be taken as part of this their amended bill.

Your orator further states, that said Wm. F. Walker not only paid said Flournoy the amount which he bid for said house and lot, but made large advances of money at New Orleans for supplies for said house, which was to have been kept as a tavern by said Gooch, Puckett, and Walker, in partnership; which said advances amounted to between five and six thousand dollars, and which were a part of the said condition of the credit entered in the books of said bank.

Your orator states, that he is advised that it is material for the purposes of justice that said Gooch and Puckett should be made parties to this their bill, (original and amended.) He further states, that he is advised that, since the last term of this court, the transfer of their notes to the United States, upon which judgment was obtained, was not according to law; that, when said pretended transfer took place, there was not a proper quorum to do that business; they further state that said William H. Shelton has not answered their original bill; they therefore pray, that said Shelton, Puckett, and Gooch, be all made defendants to this amended bill, as also to their original bill, in this cause; and that, inasmuch as said Shelton was president of said railroad company, and not only acquainted with said company's business generally, but had a full knowledge of all the important facts connected with this transaction, they pray that, in his answer, he shall disclose particularly upon what consideration this note was transferred to said U. States, and whether there is anything now due from said company to the United States, and how said note was transferred, whether legally, or illegally; let him state all he knows about said credit, to be entered on the books of said bank, for the lot in Madisonville; and that he answer all other such matters in this bill, and original bill, as far as he knows, as president of said bank, or otherwise.

That said Puckett and Gooch make, in their answer, a full statement of all the facts as herein charged in relation to the said credit, to be inserted in the books of said bank, and they pray that this amended bill may be considered as part of their original bill; and they pray for general relief, &c. HAYS, FORESTER & HOWARD,

Sols. for complainants.

Wm. F. Walker, being duly sworn, states that the matters and facts contained in the foregoing bill are true to the best of his knowledge and belief. W. F. WALKER.

Sworn to and subscribed before me, this 27th day of November, 1841.
G. W. MILLER, *U. S. Com'r.*

Exhibits mentioned in the foregoing amended bill not on file.

And afterwards, to wit, at the said November term of the court last aforesaid, to wit, on the 18th day of November, in the year of our Lord one thousand eight hundred and forty-five, the following order was entered on the minutes of said court:

It is ordered by the court that this cause be remanded to the rules, and four months be allowed both parties to take testimony.

And afterwards, to wit, on the 2d day of February, A. D. 1846, the following answer of the United [States] was filed in our said court in the words and figures, to wit:

The separate answer of the United States of America to the amended bill of the complainants, Wm. J. Hill, Wm. F. Walker, and al., against the said United States, Wm. M. Gwin and al., in the circuit court of the U. S. for the southern district of Mississippi.

Respondents, saving and reserving, &c., for answer to so much of said bill as they are advised it is material for them to answer, say, that they know nothing of the additional facts alleged in said amended bill in regard to the transaction between complainant Walker, and Gooch and Puckett, and require full proof thereof if they should be considered in any way material, which respondents insist they cannot, because, if true, they were available to the complainants on the trial at law; and respondents claim, as in their original answer, the full benefit of this objection, as if the same were formally relied on by plea on demurrer. Respondents further answering, say, they are informed, and verily believe, and so charge the truth to be, that at the time said became entitled to the credit, if he ever did, on the books of the Brandon bank, of which so much is said in the original and amended bill, and at the time of the rendition of the judgment enjoined by this suit, the said William F. Walker was lawfully indebted to said bank over and above the amount of said pretended credit.

Respondents, further answering, deny that the transfer and assignment of said note was illegal or invalid, but, on the contrary, they allege that the same was legal and valid, and on good consideration, as stated in their original answer; but even if it were not so, as they insist it was, these respondents again insist that the same was validated by the judgment at law, and that it is too late for said complainants to raise such an objection. Respondents claim, and pray that they may have the full benefit of this objection, as if the same were formally insisted upon by plea or demurrer.

Respondents, further answering, state that the complainants, and all

the defendants to said original and amended bill, except these respondents, are citizens of the State of Mississippi, and they submit that this honorable court has no jurisdiction of this cause, and they insist on, and claim the full benefit of, this objection, as fully as if the same were presented in the form of plea or demurrer.

These respondents having fully answered, pray that the injunction in this cause be disallowed, the bill dismissed, &c.

R. M. GAINES, *U. S. attorney.*

Replication.

WM. J. HILL et al.
vs.
UNITED STATES.

The complainants, by their solicitors, say they should not be precluded from having a decree in this cause by reason of any matter or thing in the answer of the United States contained, because said matters in said bill are true, and all the matters and things in said answer are untrue, and form no bar to complainants' equities set out in said bill, which complainants are ready to verify; and complainants pray judgment, according to the prayer of their bill.

WM. THOMPSON,
Sol'r for complainants.

And afterwards, to wit, at the May rules, 1846, of the court aforesaid, came the complainants, by their solicitors, into the clerk's office of said court, and set this cause for hearing on bills, answers, replication, and proof.

And afterwards, to wit, at the November term, A. D. 1846, of said court, to wit, on the 9th day of November, A. D. 1846, the United States, by attorney, made the following motion in this case, to wit:

Motion by R. M. Gaines, U. S. att'y, to dissolve the injunction and dismiss the bill, as to the U. States, for want of jurisdiction as to them, and also on the merits. R. M. GAINES, *U. S. att'y.*

And afterwards, to wit, at the May term, A. D. 1847, of said court, to wit, on the 20th day of May, in the year of our Lord one thousand eight hundred and forty-seven, this cause came on to be heard before the honorable Peter V. Daniel and Samuel J. Gholson, upon the motion of the United States of America to dismiss this suit as to them, and dissolve the injunction for want of jurisdiction, and was argued by counsel; and the court having taken time to consider, and not being able to agree in opinion what decree should be made in the cause on said motion, one of the judges being of opinion that the said motion should be sustained, and the said bill dismissed, and injunction dissolved, and the other being of opinion that the said motion be overruled, it is therefore ordered, at the request of the counsel for both complainants and defendants, that said difference of opinion be certified to the Supreme Court of the United States for their decision, whether the said motion should be sustained or overruled.

P. V. DANIEL,
S. J. GHOLSON.

Copy of evidence in said cause.

The deposition of Samuel M. Puckett, to be read in evidence in the above stated cause, he being first sworn, sayeth: That William F. Walker and a certain John S. Gooch purchased a certain lot of ground in the town of Madisonville in partnership, upon which there was a tavern-house situate. The lot was purchased at a sheriff's sale, made by Samuel M. Flournoy, sheriff of Madison county, by virtue of an execution against one Benjamin Williams; the said Walker, Puckett, and Gooch did keep tavern in partnership in said tavern-house upon said lot; that, at the time of the sale, it was agreed between said Gooch, Walker, and Puckett, that said Walker should pay the purchase money for said house and lot to the said Samuel M. Flournoy, and purchased at New Orleans large supplies to carry on the said co-partnership. He further states, that in consideration thereof, afterwards, upon the 9th July, 1839, they each executed their several notes for two thousand six hundred and one dollars and sixty cents, which notes said Walker did deposite at the Brandon bank. It was further agreed, that in consideration of the supplies and purchase money aforesaid, that the said Walker was to have a conditional credit entered on the books of said bank on the 9th day of July, 1839, for the above sum of five thousand two hundred and three dollars and sixty cents, which should be absolute so soon as said Walker should get the sheriff's deed, or satisfactory evidence of the title of said lot. He further states, that William H. Shelton was present at the bank at Brandon, and president of said bank, when Walker delivered the said notes as aforesaid to said bank; and that said president assured the said Walker, that when he procured said sheriff's deed, or satisfactory evidence of title to said Gooch and Puckett, that said amount of $5,203.60 should operate as a credit from the said 9th of July, 1839. The settlement of these matters was made on the 9th day of July, 1839, aforesaid, corresponding entries were made upon said notes. Gooch, Puckett, and Walker were present with said Shelton in said bank at Brandon at the time of said settlement and agreement. He further states, that satisfactory title has been made to Gooch and this affiant for said house and lot, and that said conditional credit has now thereby become absolute, and said Walker is entitled to a credit upon the books of said bank of said sum of $5,203.60, with interest to this time, and he has no knowledge that the said bank has, in any way, paid the said Walker the said amount of $5,203.60.

S. M. PUCKETT.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Personally appeared before me, the undersigned commissioner of affidavits in and for said district, Samuel M. Puckett, the foregoing named deponent, who, being duly sworn according to law, saith, that the statements made by him in said deposition are true, to the best of his knowledge and belief, and subscribed the same in my presence.

Given under my hand and seal, at the city of Jackson, this 27th day of November, 1841.

GEO. W. MILLER, *U. S. Com'r.*

The deposition of John S. Gooch, to be read in evidence on the trial of the above stated cause.

Having been first sworn, said: That Wm. F. Walker and Samuel M. Puckett, and himself, purchased a certain lot of ground in the town of Madisonville, in partnership, upon which there was a tavern house. The lot was purchased at sheriff's sale, made by Sam'l M. Flournoy, sheriff of Madison county, by virtue of an execution against one Benjamin Williams. The said Walker, Puckett, and deponent kept tavern in said house upon said lot in partnership; that at the time of the said sale it was agreed, between said Walker, Puckett, and Gooch, that said Walker should pay the purchase money for said house and lot to said Flournoy, and purchase at New Orleans large supplies to carry on the said copartnership. He further states that, in consideration thereof, on the 9th of July, 1839, the said Puckett and this deponent, Gooch, executed their several notes for two thousand six hundred and one dollars and eighty cents, amounting together to five thousand two hundred and three dollars and sixty cents, which notes said Walker did deposite at the Brandon bank. It was further agreed, that in consideration of the supplies and purchase-money aforesaid, that said Walker was to have a conditional credit entered on the books of said bank on the 9th of July, 1839, for the above sum of $5203.60, which should be absolute as soon as said Walker should procure the sheriff's deed for said property, or satisfactory evidence of title. Wm. H. Shelton was present at the time said Walker delivered said notes to the bank, and was president of the bank at that time; and though said president assured said Walker that when he procured said deed, or said satisfactory evidence of title, to said Gooch and Puckett, said amount of $5203.60 should operate as a credit, from the said 9th of July, 1839; the settlement of these matters was made on the 9th of July, 1839. Corresponding entries were made upon said notes. Gooch, Puckett, and Walker were present with Shelton, in said bank at Brandon, at the time of said settlement and agreement. Affiant further states, that satisfactory titles have been made to Puckett and this affiant for said house and lot, and that said conditional credit has thereby become absolute, and said Walker is entitled to a credit upon the books of said bank of the said sum of five thousand two hundred and three dollars and sixty cents, with interest to this time, and he has no knowledge that the bank has in any way paid the said Walker the said amount of five thousand two hundred and three dollars and 60-100.

J. S. GOOCH.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Personally appeared before me, the undersigned commissioner of affidavits in and for said district, John S. Gooch, the within named deponent, who, being duly sworn according to law, saith, that the statements made by him in said deposition are true, to the best of his knowledge and belief, and subscribed the same in my presence.